

December 21, 2020

Johan W.E. Maitland
jmaitland@drm.com

VIA E-FILING

Paul J. Murphy, Acting Regional Director
National Labor Relations Board, Region 01
10 Causeway Street, Room 601
Boston, MA 02222-1001

Re: Curran, Berger, & Kludt
Case No.: 01-RC-269805

Dear Acting Regional Director Murphy:

We represent Curran, Berger, & Kludt (“CBK”), the employer in the above-reference matter. We write to respectfully request that the Representation Hearing currently scheduled for Monday, December 28, 2020 be postponed by two days, until Wednesday, December 30, 2020.

The Notice of Hearing in this matter was dated December 7, 2020, precisely 14 business days prior to the scheduled hearing date of December 28, 2020. Section 102.63 of the National Labor Relations Board’s Rules and Regulations provides that the Regional Director may schedule the hearing for a date beyond 14 business days where the matter presents “unusually complex issues.” Here, there is sparse legal guidance on the propriety of the petitioned-for unit at a private immigration law firm like CBK and a number of the issues presented by the employer at hearing may be matters of first impression.

This case presents unusually complex issues. In addition to the traditional supervisor, community of interests and temporary employee arguments, this case present two important and complex new issues. First, CBK is prepared to demonstrate at the hearing that the United Auto Workers (“UAW”) is conflicted out of representing the petitioned-for unit, as the UAW also represents employees of CBK’s business clients. The impact of a legal conflict of interest is no different than a competitive business conflict of interest. Here, the UAW would be conflicted in representing the paralegals who, in their position with CBK, assist CBK clients with business decisions that are adverse to the UAW’s representation of the employees at the CBK client. The UAW cannot effectively represent both groups of employees at the same time.

Second, even if the UAW overcomes this conflict of interest, CBK expects to provide sufficient facts and information to show that its paralegals should be excluded from the proposed unit as confidential employees. This case presents the exact dilemma the Board anticipated in footnote 12 in *Foley, Hoag & Eliot*, 229 N.L.R.B. 456, 458 (1977) (“ . . . when employees of attorneys assist in [labor relations] matters, they – no less than aides of labor relations officials – are arguably ‘confidential’ employees within the meaning of Board precedent.”). While the Board has rejected application of this exception to clerical employees of law firms, it has never decided

this issue with respect to paralegals who, unlike clerical employees, communicate directly with clients on substantive legal matters on a regular basis.

Additionally, even when a matter does not present “unusually complex issues,” Section 102.63 allows the Regional Director to postpone a hearing upon the request of a party showing “good cause.” Beyond the good cause outlined above, it bears noting that the hearing is currently scheduled for the Monday following Christmas weekend. A two-day postponement of the hearing, until Wednesday, December 30, 2020, will accommodate the holiday schedules of the employer’s anticipated witnesses.

Thank you for your consideration of this request.

Very truly yours,



Johan W.E. Maitland

cc: Megan Kludt, CBK Managing Partner
Elizabeth Webb, UAW, Local 2322, Organizer

20382122.1